

OGC 72-0862

OGC Has Reviewed

21 June 1972

MEMORANDUM FOR:



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SUBJECT:

Critique of Senate Bill 1682—A Bill to
Establish the Federal Executive
Service

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2. According to this Bill, the Federal Executive Service (FES) is to be established in order to insure that the executive management of the United States Government is of the highest quality and is responsive to the needs, policies, and goals of the Nation it serves. The Central Intelligence Agency is not excluded by section 3132 of the Bill from the FES. Under section 3133(b), however, the Agency may file with the Civil Service Commission an application for exclusion from the FES. This application must state reasons for the exclusion. The Commission reviews the application and recommends a course of action to the President, who then makes a written determination. From the beginning, the Agency would be dependent upon the "good will" of the Commission and would find itself justifying its application to the Commission. A direct appeal to the President from an adverse recommendation by the Commission probably could be made but this would seem to violate the spirit of this Bill and could disrupt our traditionally good working relationship with the Commission.

3. If the Agency should be excluded from the FES under section 3133(b), section 3141(a)(1) requires that the head of an excluded agency shall prescribe regulations which establish within that agency a program of executive management as nearly like the FES as conditions of good administration warrant. In addition, this section requires that individuals appointed under the program established in an excluded agency shall be paid in accordance with section 3139(a) and shall be advanced in pay in accordance with section 3139(c). Section 3139 contains the mandatory pay rates and promotion criteria applicable to the FES.

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4. In addition, section 3(c) of the Bill provides that an employee of an agency excluded from the FES under 3133(b) and whose pay was fixed by administrative action between the first rate of GS-16 and the rate of GS-18 shall be offered an appointment under the executive management program of that agency and the pay at one of the pay rates in effect under 3139(a). The pay offered cannot be less than the rate at which the employee's pay was fixed immediately prior to the effective date of section 3(c). The Bill proposes at section 6(a)(2) that section 3133(b), and therefore section 3(c), become effective on the Bill's date of enactment.

5. It appears from the language of section 3(d) that even in the case of an agency excluded from the FES under 3133(b) that an employee who believes his employing agency has violated his rights of employment under section 3 shall have a right of appeal to the Commission. Section 3(d) provides that an agency shall take the corrective action that the Commission recommends in its decision on an appeal.

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6. The previous two paragraphs have a profound impact on the Central Intelligence Agency. They have the effect of possibly granting

tenure to certain employees (those in the grades of GS-16 to GS-18), of possibly assuring that there can be no reduction in the pay of these employees, of establishing an exclusive pay authority for these employees (section 3139), of possibly limiting the reason(s) for the separation of these employees, and of guaranteeing these employees the right of appeal to the Commission.

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